

July 20, 1949

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ARIZONA ATTORNEY GENERAL

Mr. O. C. Williams
Arizona State Land Department
Capitol Building
Phoenix, Arizona

Dear Mr. Williams:

We have your letter of July 2 in which you request an opinion upon the following question:

"Under the enabling Act, the Constitution, the decision of the Supreme Court above mentioned, and in view of Chapter 37, of the Session Laws of 1945, may the State Land Commissioner collect from the State Highway Department the royalty for sand and gravel, and rental as provided by regulation issued in accordance with Chapter 37, or is the Commissioner forbidden by the decision of the Supreme Court from making any charge from the Highway Department, notwithstanding the subsequent passage of Chapter 37, and the regulations made thereunder in accordance with its mandate?"

Chapter 37 of the Session Laws of the Seventeenth Legislature is an amendment of the laws that were in force at the time the Supreme Court decided the case of State vs. State Land Department 156 Pac. 2d, 901. The amendment of 1945 does not materially change the law as it existed prior to the enactment of Chapter 37 or the time the Supreme Court decided the above mentioned case. Section 1, Chapter 37 of the laws of 1945 provides for location of mining claims on the state lands by individuals, partnerships, associations or corporations but does not make provision for the state to locate mining claims on state lands.

Therefore, your question is answered in the decision of our Supreme Court above referred to wherein the Court said:

"We do not find anywhere in the statutes that the legislature has in terms required the state to pay a rental or royalty on the sand, rock, gravel or natural products from these lands used in the construction of highways. Nor is there any duty imposed upon the land commissioner by the law to collect such rentals or royalties."

Under this decision the Land Department would not be permitted to require the payment of rental or royalty on sand, rock, gravel, or natural products from state lands to be used by the State in the construction of public highways for the State.

Very truly yours,

EARL ANDERSON, Assistant

JOHN L. SULLIVAN, Attorney General

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